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November 28, 2005

Mr. Charles L. A. Terreni
Chief Clerk/Administrator
South Carolina Public Service Commission
Synergy Business Park, The Saluda Building
101 Executive Center Drive
Columbia, South Carolina 29210

Re: Petition of MCImetro Access Transmission Services, LLC for Arbitration of Certain Terms and Conditions of Proposed Agreement with Horry Telephone Cooperative, Inc. Concerning Interconnection and Resale under the Telecommunications Act of 1996
Docket No. 2005-188-C

Dear Mr. Terreni:

Enclosed for filing in the above-referenced matter, please find an original and (10) copies of a Post Hearing Brief of Horry Telephone Cooperative, Inc. and an original and ten (10) copies of a Proposed Order of Horry Telephone Cooperative, Inc. By copy of this letter and Certificate of Service, all parties of record are being served with a copy of the Brief and a copy of the Proposed Order by U. S. Mail.

Please clock in a copy of this filing and return it to us by our courier.

Thank you for your assistance.

Very truly yours,

Margaret M. Fox

Margaret M. Fox

MMF/rwm
Enclosures

cc: Parties of Record

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BEFORE THE

PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2005-188-C

In Re: Petition of MCImetro Access Transmission Services, LLC for Arbitration of Certain Terms and Conditions of Proposed Agreement with Horry Telephone Cooperative, Inc., Concerning Interconnection and Resale under the Telecommunications Act of 1996

BRIEF OF HORRY TELEPHONE COOPERATIVE, INC.

Horry Telephone Cooperative, Inc. ("Horry") respectfully submits this Brief in support of its positions on the issues presented in the above-captioned arbitration with MCImetro Access Transmission Services, LLC ("MCI"). In its Petition, MCI set forth ten (10) issues for arbitration. The ten issues presented in this arbitration are the same ten issues that were previously addressed by the Commission in the arbitration involving MCI and four other rural incumbent local exchange carriers in South Carolina (Farmers Telephone Cooperative, Inc., Hargray Telephone Company, Home Telephone Company, Inc., and PBT Telecom, Inc.) in Docket No. 2005-67-C. The ten (10) issues may be grouped conceptually into four topics for discussion purposes as follows: (1) Direct vs. Indirect Service (Issues 2, 4(a), 7, and 9); (2) ISP-Bound Traffic and Virtual NXX (Issues 3, 4(b), and 5); (3) Reciprocal Compensation Rate (Issue 10); and (4) Calling Party Identification (Calling Party Name ("CPN") and Jurisdictional Indicator Parameter ("JIP")) (Issues 1, 6, and 8).

All of the issues presented in this arbitration have previously been addressed in detail by the Commission in Docket No. 2005-67-C, and there is no reason for the Commission to deviate from its rulings in that docket or from any prior precedent relied upon by the Commission in reaching its rulings in Docket No. 2005-67-C. The only difference is that, with respect to the implementation of Jurisdictional Indicator Parameter ("JIP") in Issues 1 and 6, Horry has demonstrated that implementation of JIP by MCI is technically feasible, and Horry has further demonstrated that a penalty for the failure of a Party to provide JIP on at least 90% of the calls is warranted, as discussed below. A discussion of the specific issues and groups of issues follows.

ARGUMENT

TOPIC 1: DIRECT VS. INDIRECT SERVICE (ISSUES 2, 4(a), 7, AND 9)

A. Section 251(b) Obligations Extend Only to Telecommunications Traffic Exchanged Between Local Exchange Carriers ("LECs") that Serve End Users Directly.

The question that is raised in Issues 2, 4(a), and 7 is whether Horry may appropriately limit the scope of its Agreement with MCI so that it applies only between Horry and MCI – and relates to the exchange of their respective end-user customers' traffic – or whether Horry can be forced to exchange traffic with end users of other entities with whom MCI has contracted, even if those entities are not telecommunications carriers and would not be entitled to request interconnection with Horry in their own right.

The answer is clear. Horry is required to provide interconnection and to exchange traffic only with other telecommunications carriers.[1] This Agreement is properly limited in scope to the intraLATA traffic exchanged between customers directly served by one party and the customers directly served by the other party, and the definition of "end user" is properly limited to retail business or residential end-user subscribers (*i.e.*, it does not include other carriers).

The carrier directly serving the end-user customer is the only carrier entitled to request interconnection for the exchange of traffic under Section 251(b) of the Act. Other carriers that provide local exchange service and wish to exchange traffic with Horry must establish their own interconnection or traffic exchange agreements with Horry. While it may be appropriate under certain circumstances for a telecommunications carrier to interconnect its facilities indirectly with Horry's network under Section 251(a) of the Act, this provision does not allow *non-telecommunications* service providers to interconnect (either directly or indirectly), nor does it relieve an interconnecting carrier of the obligation to establish its own arrangements for exchanging traffic and establishing an appropriate compensation agreement with the telecommunications carrier to which it is indirectly connected.

MCI's argument that Section 251(a) of the Act requires Horry to transport and terminate third-party traffic is erroneous. 47 U.S.C. § 251(a) requires that:

> Each telecommunications carrier has the duty---
>
> (1) to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers.

[1] *See* Section 251 of the Federal Telecommunications Act of 1996 (the "Act").

The duty to interconnect under Section 251(a) of the Act relates to "the physical linking of two networks for the mutual exchange of traffic."[2] It does *not* require a carrier to transport and terminate another carrier's traffic.[3] Transport and termination obligations extend from Section 251(b) of the Act and apply only directly between local exchange carriers.[4] Nothing in the Act supports MCI's contention that indirect *service* to *end-user customers* was contemplated, much less permitted, by the Act. In fact, the FCC's rules implementing interconnection uniformly address interconnection as a bilateral agreement between two carriers, each serving end-user customers within the same local calling area. Section 251(b) describes duties for each "local exchange carrier" with respect to other "local exchange carriers." The FCC's *Local Competition Order* discusses the exchange of traffic for local interconnection purposes in which two carriers collaborate "to complete a local call."[5]

Interconnection under Section 251(a) is available only to telecommunications carriers.[6] Likewise, the obligations imposed by Section 251(b), including the duty to transport and terminate traffic, relate to parallel obligations between two competing telecommunications carriers serving within a common local calling area. Whether Voice

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[2] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499 (1996), *aff'd in part and vacated in part sub nom. Competitive Telecommunications Ass'n v. FCC*, 117 F.3d 1068 (8th Cir. 1997) and *Iowa Utils. Bd. v. FCC*, 120 F.3d 753 (8th Cir. 1997), *aff'd in part and remanded, AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 119 S. Ct. 721, 142 L. Ed. 2d 835 (1999); Order on Reconsideration, 11 FCC Rcd 13042 (1996), Second Order on Reconsideration, 11 FCC Rcd 19738 (1996), Third Order on Reconsideration and Further Notice of Proposed Rulemaking, FCC 97-295 (rel. Aug. 18, 1997) ("*Local Competition Order*"), at ¶ 11.

[3] *See Total Telecommunications Services, Inc., and Atlas Telephone Company, Inc. v. AT&T Corporation*, File No. E-97-003, FCC 01-84, Memorandum Opinion and Order (rel. Mar. 13, 2001), at ¶ 23 ("In the *Local Competition Order*, we specifically drew a distinction between 'interconnection' and 'transport and termination,' and concluded that the term 'interconnection,' as used in section 251(c)(2), does not include the duty to transport and terminate traffic.")

[4] *See* Section 251(b)(5); *Local Competition Order*, CC Docket 96-98, FCC 96-325 at ¶ 1034.

[5] *See Local Competition Order*, CC Docket 96-98, FCC 96-325 at ¶ 1034.

[6] See Section 251(a)(1) of the Act ("Each telecommunications carrier has the duty . . . to interconnect . . . with the facilities and equipment *of other telecommunications carriers* . . .") (emphasis added).

over Internet Protocol ("VoIP") will be classified as a telecommunications service or information service is currently an open question before the FCC.[7] Unless and until the FCC does classify VoIP as a telecommunications service, VoIP providers do not have rights or obligations under Section 251. Thus, where MCI intends to act as an intermediary for a facilities-based VoIP service provider (*e.g.*, Time Warner), the VoIP provider would most likely argue that it is currently not required (and may never be required) to provide dialing parity or local number portability and, therefore, the duties of Horry and the VoIP service provider would not be parallel. This type of a non-parallel relationship was not contemplated or provided for under the Act.

Furthermore, the FCC's regulation on reciprocal compensation specifically refers to the direct relationship of the carrier to the end-user customers in the exchange of traffic.

> For purposes of this subpart, a reciprocal compensation arrangement *between two carriers* is one in which *each of the two carriers* receives compensation *from the other carrier* for the transport and termination *on each carrier's network facilities* of *telecommunications traffic that originates on the network facilities of the other carrier.*[8]

Horry's position that only traffic directly generated by Horry and MCI end-user customers should be exchanged pursuant to the Agreement is in keeping with the language and intent of the Act, as well as FCC rules and orders.

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[7] *See* Notice of Proposed Rulemaking, *IP-Enabled Services*, 19 FCC Rcd 4863 (2004); *Vonage Holdings Corp., Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, WC Docket No. 03-211, FCC 04-267, Memorandum Opinion and Order (rel. Nov. 12, 2004) , ("*Vonage Order*"), fn 46 ("We do not determine the stature classification of Digital Voice under the Communications Act, and thus do not decide here the appropriate federal regulations, if any, that will govern this service in the future.")

[8] 47 CFR § 51.701(e) (emphasis added).

If interconnection agreements were not limited to carriers serving their own customers, one CLEC could obtain an interconnection agreement and terminate traffic for all other CLECs, CMRS providers and interexchange carriers. In general, it is expected that intraLATA traffic would roughly be in balance between two connecting carriers. If a CLEC aggregates traffic, however, the traffic between the two parties would never be in balance, creating opportunities for CLECs to engage in regulatory arbitrage.

B. Transit Arrangements for Traffic Through a Tandem Do Not Conflict With Section 251(b) Requirements.

An interconnection agreement is between two parties. Neither third parties nor their traffic are part of an interconnection agreement between Horry and MCI. MCI attempts to confuse the issue by pointing out that the proposed Agreement provides for transit traffic, which, according to MCI, is third party traffic. However, the issue of performing a transit function is separate and distinct from the issue of indirect traffic exchange of third parties' end-user customers. It is necessary for the agreement to have language regarding transit traffic because Horry has a tandem switch in its network and other carriers have NPA-NXXs with a homing arrangement of Horry's tandem. When MCI originates local traffic that terminates to a CLEC or another carrier that has an NPA-NXX with a homing arrangement to Horry's tandem in the Local Exchange Routing Guide ("LERG"), a transit function is required. If MCI originates such traffic, the agreement states that MCI will pay the transit rate to Horry. The transit language does not place any obligations on third party carriers. In addition, the language specifically states that payment of reciprocal compensation on such traffic is not part of this agreement but instead must be negotiated between MCI and the third party. Providing for transit in the Agreement is consistent with Horry's position that the carriers may have

indirect "physical" interconnection facilities but must also have direct contractual arrangements for the transport and termination of traffic.

C. Case Law Supports Horry's Position Requiring a Direct Relationship.

Applicable statutory and case law support Horry's position that MCI is not entitled to interconnection for the purpose of acting as an intermediary for a third party that will, in turn, provide services to end users. "Telecommunications carrier" is defined in the federal Act as a provider of telecommunications service.[9] "Telecommunications service" means "the offering of telecommunications for a fee *directly to the public*, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used."[10] Applying these definitions to the situation here, to the extent MCI seeks to provide service to Time Warner Cable Information Services, LLC ("TWCIS"), as both MCI and TWCIS have stated, or indirectly to TWCIS' end-user customers, such service does not meet the definition of "telecommunications service" under the Act and, therefore, MCI is not a "telecommunications carrier" with respect to those services. Thus, MCI is not entitled to seek interconnection with Horry with respect to the service MCI proposes to provide indirectly to TWCIS' end-user customers.

This reasoning is consistent with the United States Court of Appeals for the District of Columbia Circuit's interpretation of the Act. The Court has held that, when a carrier is not offering service "directly to the public, or to such classes of users to be effectively available directly to the public," that carrier is not a telecommunications carrier providing telecommunications service under the Act with respect to that service.[11] Under this precedent, Horry has properly required that the Interconnection Agreement

[9] Section 153(44) of the Act.
[10] Section 153(46) of the Act.
[11] *Virgin Islands Telephone Corp. v. FCC*, 198 F.3d 921 (D.C. Cir. 1999).

between Horry and MCI be limited to the exchange of traffic generated by the end-user customers directly served by the parties.

Other states have addressed the same issue that is presently before the Commission. The Iowa Utilities Board ("Iowa Board") recently dismissed a request by Sprint Communications Company, L.P. ("Sprint") to interconnect with twenty-seven rural carriers for the purpose of providing interconnection and services to a cable company that would, in turn, serve the end-user customers.[12] The Iowa Board found that Sprint's service was not being offered on a common carrier basis but to "its private business partners pursuant to individually negotiated contracts," and that Sprint, therefore, was not a telecommunications carrier under the Act, pursuant to the precedent of the *Virgin Islands* decision.

MCI points to an Ohio Public Utilities Commission decision to support its argument.[13] However, as the Iowa Board specifically noted, the Ohio Commission failed to even mention the D.C. Circuit Court's *Virgin Islands* decision and the related FCC rulings.[14] The Iowa Board found the Ohio Commission's decision to be "of little help in this proceeding."[15]

Other state decisions addressing similar issues are not controlling.[16] It is important to note that, unlike rural local exchange carriers in some other states, Horry is

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[12] *In re Arbitration of Sprint Communications Co. v. Ace Communications Group, et al.*, Iowa Util. Bd., Docket No. ARB-05-2, Order Granting Motions to Dismiss (rel. May 26, 2005), 2005 WL 1415230 (slip opinion) ("*Iowa Board Order*").

[13] *See* In re the Application and Petition in Accordance with Section II.A.2.b of the Local Service Guidelines filed by The Champaign Telephone Company, et al., Case No. 04-1494-TP-UNC, Finding and Order (issued January 26, 2005), Order on Rehearing (issued April 13, 2005).

[14] *Iowa Board Order* at 15.

[15] *Id.*

[16] *See, e.g.*, Order, *Cambridge Telephone Company, et. al., in Petitions for Declaratory Relief and/or Suspensions for Modification Relating to Certain Duties Under §§ 251(b) and (c) of the Federal Telecommunications Act*, No. 05-0259-0265,-0270, -0275,-0277, and –0298, Illinois Commerce

not arguing that they should not be required to interconnect with MCI *at all*; they merely seek to limit the Interconnection Agreement so that it applies to interconnection and the exchange of traffic between end-user customers served directly by the parties, as intended by the Act.

This Commission should focus on the language and intent of the Act, as well as the findings and implications of the D.C. Circuit Court's opinion in the *Virgin Islands* case and the related FCC rulings discussed therein, and should limit the parties' interconnection and exchange of traffic to traffic generated by the end user customers directly served by the respective parties. The Commission should approve Horry's proposed language for Issues 2, 4(a), and 7, which clarifies that the Agreement is limited to traffic exchanged between the parties where each party directly provides telephone exchange service to its end user customers within the LATA.

D. Horry Is Not Being Discriminatory in Requiring a Direct Relationship With Carriers Who Seek to Exchange Traffic With Horry.

At the hearing on this matter, MCI asserted that Horry, through an affiliate, provides VoIP service to customers and, therefore, Horry is providing what it says MCI should not be permitted to provide.[17] This is not true. As Horry's witness testified at the hearing, Horry does not provide VoIP service to customers, either itself or through any affiliated entity.[18] Additionally, while Horry has a small percentage ownership in Spirit Telecom ("Spirit"), Spirit is not an affiliate of Horry.[19]

Commission (July 13, 2005). (*Illinois Commerce Commission order*) (petition for reconsideration pending); Order Resolving Arbitration Issues, *Petition of Sprint Communications, L.P., Pursuant to Section 252(b) of the Telecommunications Act of 1996, for Arbitration to Establish an Intercarrier Agreement with Independent Companies*, Case 05-C-0170, State of New York Public Service Commission (May 24, 2005).

[17] *See* TR. at p. 78, ll. 13-17.

[18] TR. at p. 163, l. 7.

[19] *See* S.C. Code Ann. § 35-2-201 (affiliate defined as "a person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with a specified person."); *see*

MCI also appeared to be attempting to make an argument that Horry allows other carriers to connect indirectly with Horry through a BellSouth tandem switch.[20] However, the record shows to the contrary. When questioned as to whether there could be indirect interconnection between an independent like Horry and a CLEC, with a third-party carrier performing a transit function, Mr. Meredith testified that he believed Horry has its own tandem switch and, therefore, "this particular scenario does not apply in the current case."[21] Even if Horry did not have a tandem switch, Mr. Meredith clearly stated that indirect connection through a transiting carrier "should not occur. There should be a direct relationship between the CLEC, the originating party, and the terminating party for a call. The entire discussion of phantom traffic and unidentified traffic results because people are trying not to do that, but they should have agreements."[22] That is exactly what Horry is seeking to do in allowing MCI to exchange only its own end-user traffic with Horry.

E. The E-911 Issue Raised By MCI Is Not Relevant.

MCI also raised an issue regarding E-911 at the hearing. According to MCI's counsel in his opening statement, VoIP providers like TWCIS have been ordered by the FCC to provide E-911 by the end of November, and TWCIS seeks to do that by interconnecting to the Public Safety Answering Point ("PSAP") through MCI.[23] Horry witness Douglas Meredith agreed that one of the ways a VoIP provider can satisfy an E-911 requirement is to connect through an incumbent LEC.[24] However, in this case the

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also TR. at 17-18 (counsel for Horry notes that, while Horry has a small ownership interest in Spirit, Horry does not control, is not controlled by, and is not under common control with Spirit).

[20] *See* TR. at p. 255, l. 7 through p. 256, l. 21.

[21] TR. at p. 256, ll. 13-21.

[22] TR. at p. 256, ll. 6-11.

[23] TR. at p. 6, ll. 6-12.

[24] TR. at p. 248, ll. 10-14.

incumbent LEC 911 service provider that is connected to the PSAP is a Regional Bell Operating Company and not Horry. In other words, connection to the PSAP is not relevant because *MCI has already conceded that it will not seek connection to the PSAP through Horry*, either directly or indirectly. The Ancillary Services Attachment to the proposed interconnection agreement contains clear and undisputed language on this point as follows:

> 1. 911/E-911 Arrangements
>
> 1.1 ILEC utilizes [RBOC] for the provision of 911/E-911 services. The CLEC is responsible for connecting to [RBOC] and populating [RBOC]'s database. All relations between [RBOC] and CLEC are totally separate from this Agreement and ILEC makes no representations on behalf of [RBOC].

MCI's argument that E-911 and associated public interest issues are somehow implicated in this proceeding is simply not true.

F. Local Number Portability is Only Required When the End User Has Telecommunications Service Both Before and After the Port.

Another issue that is related to the question of direct vs. indirect service is Issue 9 regarding Local Number Portability ("LNP"). The Federal Communications Commission ("FCC") rules on LNP require only service provider portability.

The definition of service provider portability states:

> [S]ervice provider portability means the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another.[25]

[25] 47 C.F.R. § 52.21(q).

Service provider portability is the only type of portability required.[26] There are no rules or standards today providing for or governing porting of numbers to non-telecommunications carriers.

The definition of service provider portability is clear that the port must be between *two telecommunications carriers*.[27] This would also require end users to have *telecommunications service* before and after the port.[28] The definition does not provide for porting to a customer who switches to a non-telecommunications service. It also does not provide for porting between a telecommunications service provider and a non-telecommunications service provider. There are no rules requiring these types of ports. There are also no standards in the Alliance for Telecommunications Industry Solutions ("ATIS") standards body to address how these ports would actually take place, the billing associated with the resulting calls, and how traffic would be exchanged.

MCI and Time Warner Cable Information Services, LLC ("TWCIS") have both made it clear that MCI expects that the arrangement it reaches with Horry will enable MCI to port numbers from Horry so that MCI can, in turn, provide those numbers *to TWCIS* for use by TWCIS' VoIP end-user customers.[29] In this indirect relationship, there is no assurance that the end-user customer that requested the port will actually retain the number, since MCI has no relationship with the end-user customer. This does not meet the definition of service provider portability and Horry is under no obligation to allow this type of porting. Therefore, Horry has proposed language that would allow MCI to

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[26] *See* Third Report and Order, *Telephone Number Portability*, 13 F.C.C.R, 11701 (1998), at ¶ 3 ("In light of the statutory definition, Section 251(b)(2) requires service portability, but not location or service portability.")

[27] *See* 47 C.F.R. § 52.21(q).

[28] *Id.*

[29] *See, e.g.*, TWCIS' Petition to Intervene in this docket dated June 28, 2005 (in which TWCIS describes its relationship with MCI and states a particular interest in the Commission's resolution of Issue 9).

properly port Horry's numbers to MCI's end-user telecommunications service customers, but would not allow for other types of porting that Horry is not obligated to provide.

The MCI/TWCIS proposed porting arrangement does not meet the definition of service provider portability for several reasons. First, TWCIS has included a "regulatory disclaimer" in its state filings stating that TWCIS does not concede that its VoIP services constitute telecommunications services, local exchange services, common carrier offerings, or services that are otherwise subject to federal or state regulation.[30] Horry is not required to provide LNP to a non-telecommunications service provider, and Horry should not be required to provide indirectly (through MCI as an intermediary) what it would not be required to provide directly. Although MCI may be a telecommunications service provider for some purposes, in this situation no telecommunications service is being provided to the end user. The end user in this situation is a VoIP customer of TWCIS, not a telecommunications service customer of MCI. Thus, the two basic qualifications for service provider portability are not met. The end user does not have telecommunications service after the port and the service provider is not a telecommunications service provider.

MCI suggests that the FCC has concluded that VoIP providers are entitled to LNP.[31] However, the order cited by MCI does not deal with LNP at all and is not an order of general applicability. [32] The FCC's order granted SBC Internet Services, Inc. ("SBCIS") a waiver under specific circumstances to allow that company to obtain telephone numbers directly from the numbering administrator to expand SBCIS's VoIP

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[30] *See* Testimony of Julie Y. Patterson in Commission Docket No. 2004-280-C at p. 6, ll. 4-8.
[31] *See, e.g.*, TR. at p. 85, ll. 6-8.
[32] *See* Order, *In the Matter of Administration of the North American Numbering Plan*, CC Docket No. 99-200, rel. Feb. 1, 2005 ("SBCIS Order").

trial.[33] The SBCIS Order does not address LNP, and therefore does not take a position on porting numbers to VoIP providers, either directly or indirectly.

The Commission should adopt Horry's proposed language with respect to LNP (Issue 9) without modification. The language proposed by Horry comports with Horry's obligations with respect to LNP, but does not require Horry to provide LNP in a manner that exceeds those obligations to the detriment of Horry, its customers, and the general public.

TOPIC 2: ISP-BOUND TRAFFIC AND VIRTUAL NXX (ISSUES 3, 4(b), AND 5)

A. ISP-Bound Traffic Must Be Within the Local Calling Scope

The main issue in dispute between Horry and MCI with respect to this topic is not whether ISP-Bound traffic is in the jurisdiction of the South Carolina Commission or the FCC, as MCI suggests. The issue is whether the traffic destined for an ISP to which a virtual NXX has been assigned (*i.e.*, the ISP is not physically located in Horry's local calling area but MCI has assigned a local number to the ISP) should be treated the same as local ISP traffic or non-local ISP traffic. Horry believes, consistent with FCC and Commission precedent, that the physical location of the ISP is the key. Under Horry's proposed language all types of interexchange calls, including dial-up ISP calls using a virtual NXX, are treated in a manner consistent with the Commission's and the FCC's existing rules, which exclude all such calls from reciprocal compensation and ISP intercarrier compensation.

The Commission's and the FCC's current intercarrier compensation rules for wireline calls clearly exclude interexchange calls from both reciprocal compensation and

[33] *Id.*

ISP intercarrier compensation. These calls are subject to access charges. This is also the case for virtual NXX calls, which are no different from standard dialed long distance toll or 1-800 calls. All of these types of calls are interexchange calls that do not fall within the reciprocal compensation rules. In other words, if an Horry customer calls someone in California, it is a long distance call, regardless of whether Horry's customer is calling a friend or calling AOL in California. That traffic is considered interexchange and is not the type of ISP-bound traffic that has been the subject of recent FCC orders concerning ISP compensation.

The question that has been addressed by the FCC is how to treat ISP-bound traffic in a situation where the ISP is physically located within the same local calling area that is served by a local exchange carrier ("LEC").[34] The FCC found that such traffic is "information access" and, therefore, not within the scope of Section 251(b)(5); *i.e.*, it is not subject to the FCC's reciprocal compensation rules.[35]

It is clear from the FCC orders and rules that (1) traffic destined for customers (including ISPs) outside the local exchange area is interexchange traffic and is to be treated as such; and (2) traffic destined for ISPs inside the local exchange area is subject to compensation under the FCC's interim ISP-bound traffic compensation regime.[36]

To confuse matters, some carriers have a practice of assigning local numbers to customers when the customer is not physically located in the local area. This practice is

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[34] Order on Remand and Report and Order, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic*, 16 FCC Rcd 9151 (2001) ("*ISP Remand Order*"), at ¶ 13.

[35] *ISP Remand Order* at ¶ 44.

[36] *See ISP Remand Order*; *see also* Order, *Petition of Core Communications, Inc. for Forbearance Under 47 U.S.C. § 160(c) from Application of the "ISP Remand Order"*, WC Docket No. 03-171 (rel. Oct. 18, 2004). While the D.C. Circuit Court of Appeals remanded the *ISP Remand Order* on the grounds that the FCC had failed to provide an adequate legal basis for the rules it had adopted, the Court did not vacate the order and observed that there may be other legal bases for adopting the rules. *See WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002). The FCC's interim rules remain in effect pending review on remand.

known as assigning a "Virtual NXX." A Virtual NXX is an exchange code assigned to end users physically located in exchanges other than the one to which the code was assigned. The issue that has arisen in this arbitration is how such Virtual NXX traffic should be treated when it is destined for an ISP that is physically located outside the local exchange area but has been assigned a local number. Horry believes the answer is clear that Virtual NXX traffic should be treated the same, regardless of whether it is destined for an ISP or some other type of business.

There is clear precedent in the Commission's prior orders with respect to the practice of assigning Virtual NXX's, both with respect to ISPs and to other customers.[37] Even before addressing this same issue in the recent arbitration in Docket No. 2005-67-C, this Commission ruled in two separate orders that the physical location of the customer determines the proper jurisdiction of calls. In the *Adelphia Arbitration Order*,[38] the Commission concluded that reciprocal compensation should be based on the physical location of the calling and called parties, not the NXX codes of those parties. In the *US LEC Arbitration Order*,[39] the Commission held that:

> This Commission has already addressed this issue in a prior arbitration and that decision supports Verizon's position in that this Commission held that "reciprocal compensation is not due to calls placed to 'virtual NXX' numbers as the calls do not terminate within the same local calling area in which the call originated." *The Commission squarely held that compensation for traffic depends on the end points of the call – that is, where it physically originates and terminates.* In rejecting the claim that "the local nature of a call is determined based upon the NXX of the originated and terminating number," the Commission noted that, "[w]hile

[37] *See* Order No. 2005-544 in Docket No. 2005-67-C, which ruled on the exact same issue presented here.
[38] *Petition of Adelphia Business Solutions of South Carolina, Inc. for Arbitration of an Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to Section 252 (b) of the Communications Act of 1934, As Amended by the Telecommunications Act of 1996*, Docket No. 2000-516-C, Order No. 2001-45 (January 16, 2001) ("*Adelphia Arbitration Order*").
[39] *Petition of US LEC of South Carolina, Inc. for Arbitration With Verizon South, Inc., Pursuant To 47 U.S.C. 252(b) Of The Communications Act Of 1934, As Amended By The Telecommunications Act Of 1996*, Docket No. 2002-181-C, Order No. 2002-619 (August 30, 2002) ("*US LEC Arbitration Order*").

> the NXX code of the terminating point is associated with the same local service area as the originating point, the actual or physical termination point of a typical call to a 'virtual NXX' number is not in the same local service area as the originating point of the call."[40]

MCI argues that the *Adelphia* and *US LEC* Orders "should no longer be controlling, at least with regard to ISP-bound traffic."[41] Horry strongly disagrees. Virtual NXX for dial-up calls to ISPs is not "ISP-bound Traffic," as MCI argues, but is interexchange traffic that is subject to the appropriate access charges. As the Commission has correctly found in prior orders, the physical location of the calling and called parties determines the proper treatment of the call.[42] In the above example, if the customer is calling AOL in California, it is a long distance call. The fact that a CLEC attempts to have those calls rated as local calls by assigning a local number to that customer (Virtual NXX) does not make them local calls, because the calls are still terminating in California. MCI's argument to the contrary is a transparent attempt to game the system and should be rejected as such, in addition to being contrary to the Commission's prior determinations on this issue.

Nothing in the FCC's rules or orders indicates anything to the contrary. The ISP intercarrier compensation regime established in the FCC's *ISP Remand Order*[43] does not apply to Virtual NXX or other interexchange calls delivered to ISPs, as MCI contends. The United States Court of Appeals for the District of Columbia Circuit, in reviewing the FCC's order, clearly recognized that the "interim [compensation] provisions devised by the [FCC]" apply only to "calls made to [ISPs] *located within the caller's local calling*

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[40] *Id.* at 22 (emphasis added).
[41] MCI Petition at p. 11.
[42] *See* Order Nos. 2005-544, 2002-619, 2001-45.
[43] Order on Remand and Report and Order, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic*, 16 FCC Rcd 9151 (2001).

area."[44] In other words, the ISP intercarrier compensation regime applies only to calls that would have been subject to reciprocal compensation if made to an end-user customer, rather than an ISP.

The D.C. Circuit Court's understanding of the scope of the intercarrier compensation obligation established in the *ISP Remand Order* is correct. The question before the FCC with respect to ISP-bound traffic has always been whether calls to an ISP physically located in the same local calling area as the calling party are to be treated the same as calls to a local business. Thus, in the *ISP Declaratory Ruling*,[45] the FCC rejected CLECs' arguments that a call to an ISP "terminate[s] at the ISP's local server" and "ends at the ISP's local premises." And, in the *ISP Remand Order*, the FCC recognized that it was addressing the compensation due for "the delivery of calls from one LEC's end-user customer to an ISP in the same local calling area that is served by a competing LEC."[46]

B. The Jurisdiction of the Call is Based on the Physical Location of the Calling and Called Parties.

Issue 4(b) involves whether or not the jurisdiction of the call should be determined based on the physical locations of the originating and terminating customers. This is the long-established and settled rule for determining the proper treatment and rating of calls. Both the FCC and the Commission have determined that the call jurisdiction is based on the physical location of the end-user customers. The FCC has determined that the end-user customers involved in a telecommunications transmission

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[44] *WorldCom, Inc. v. FCC*, 288 F.3d 429, 430 (D.C. Circuit 2002).
[45] *Declaratory Ruling and Notice of Proposed Rulemaking, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic*, 14 FCC Rcd 3689 (1999) ("*ISP Declaratory Ruling*"), at ¶¶ 12-15.
[46] *ISP Remand Order* at ¶¶ 10, 13.

must be physically located within the "local area" in order for the FCC to conclude that such traffic is "local."[47]

As discussed above, this Commission has also ruled in the previous arbitration in Docket No. 2005-67-C and in two separate prior orders that the physical location of the customer determines the proper jurisdiction of calls. In both the *Adelphia* and *US LEC* Arbitration Orders, as well as in Order No. 2005-544 in Docket No. 2005-67-C, the Commission concluded that reciprocal compensation should be based on the physical location of the calling and called parties, not the NXX codes of those parties. Furthermore, in the *US LEC Arbitration Order*, the Commission specifically recognized and discussed the application of this rule to Virtual NXX traffic destined for ISPs outside the local calling area.[48]

The Commission should continue to uphold its previous positions that the physical location of the customer is the criteria for determining the jurisdiction of the call and should adopt Horry's language as proposed without modification.

C. Reciprocal Compensation Should Have No Per-Minute-of-Use Charge.

Issue 5 relates to whether there should be reciprocal compensation paid for out-of-balance traffic. Horry has proposed that there should not be a per-minute compensation rate for the exchange of IntraLATA Traffic, but that compensation for IntraLATA Traffic should be in the form of the mutual exchange of services provided by the other Party. This is because the traffic should be roughly balanced if the parties are treating the traffic in an appropriate manner, as described above. However, it is obvious from MCI's

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[47] *See* Order, *In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 F.C.C.R. 15499 (1996) at ¶ 1043.

[48] *See US LEC Arbitration Order* at pp. 25-27; *see also* Order No. 2005-544 at pp. 21-27.

position with respect to ISP-bound Virtual NXX traffic that it intends to provide dial-up service to ISPs and believes that such dial-up traffic using virtual NXX should be subject to reciprocal compensation. As stated above, such virtual NXX traffic is not "ISP-bound Traffic" under the FCC's *ISP Remand Order* and therefore is not subject to reciprocal compensation. The only traffic that would be subject to reciprocal compensation is the remaining IntraLATA Traffic which, in the absence of regulatory arbitrage by MCI, should be roughly balanced.

Moreover, MCI is a CLEC and can change its business plan at any time to serve a certain sub-set of end users to enhance its payments from interconnecting carriers. MCI can target a type of customer like an ISP, thereby potentially generating out-of-balance traffic. Horry does not have the flexibility to choose certain types of customers, as Horry must serve any end-user customer within its service area who requests service.

It is for these reasons that the Commission should adopt Horry's proposed language regarding compensation for IntraLATA Traffic.

TOPIC 3: RECIPROCAL COMPENSATION RATE (ISSUE 10)

The issue of an appropriate reciprocal compensation rate is not ripe for arbitration because it was not brought up during the negotiations. The first time that MCI proposed any reciprocal compensation rate was when it filed its Arbitration Petition. The parties have had no negotiations whatsoever with respect to the reciprocal compensation rate.

Negotiation is required before an issue can be submitted for arbitration.[49] This issue is, therefore, not properly before the Commission at this time.

Furthermore, as discussed above, the Commission need not set a reciprocal compensation rate because it is anticipated that the traffic will be roughly balanced between the parties in the absence of regulatory arbitrage, and that compensation in the form of the mutual performance of services is appropriate.

It should also be noted that the rate proposed by MCI, which MCI erroneously states Horry has "conceded," is not appropriate in this case. The rate noted by MCI was established by the FCC for use only where the LEC has opted into the interim compensation mechanism established by the FCC.[50] That is not the case here, and the rate does not apply to Horry.

TOPIC 4: CALLING PARTY IDENTIFICATION (CALLING PARTY NAME ("CPN") AND JURISDICTIONAL INDICATOR PARAMETER ("JIP")) (ISSUES 1, 6, AND 8)

A. JIP Helps Identify the Physical Location of the Customer.

There are three inter-related issues regarding calling party identification. The first issue, Issue 1, is whether the parties should be required to provide a "Jurisdictional Indicator Parameter" or "JIP" in their call signaling information. From Horry's standpoint, JIP is a critical piece of information that helps Horry determine the physical location of the calling party and, therefore, the jurisdiction of a call that is sent to Horry

[49] *See* Section 252(a)(2) ("Any party negotiating an agreement under this section may, at any point in the negotiations, ask a State commission to participate in the negotiation and to mediate any differences *arising in the course of the negotiations*"); Section 252(b)(1) (Any "*party to the negotiation*" may, during the specified time frame, petition a State commission to "arbitrate any *open* issues.") (emphasis added).
[50] *See ISP Remand Order* at ¶ 89.

for termination. Horry is willing and able to provide JIP on all calls sent to MCI and believe there is no reason MCI cannot do the same.

The jurisdiction of the call is important because that is what determines the appropriate intercarrier compensation exchanged between the Parties for the exchanged traffic. Local calls, intrastate interLATA, and interstate calls are all treated differently for compensation purposes. Local calls are subject to reciprocal compensation, bill and keep, or an agreement to mutually perform termination services. Intrastate interLATA calls are subject to the appropriate South Carolina intrastate switched access rates, which are approximately $0.01 per minute of use. Interstate calls are subject to the appropriate interstate switched access charges, which range from approximately $0.015 to $0.025 per minute of use.

The large disparity in the rates for access and reciprocal compensation has provided an incentive for some carriers to engage in regulatory arbitrage by disguising their toll traffic as local or intraLATA traffic for the purpose of compensation under the agreement to avoid paying access charges. Based on investigations by several industry groups, including a special Phantom Traffic Conference held by the National Exchange Carriers Association in April 2004, the traffic can be improperly identified using several methods.

One method for misrepresenting the traffic is to substitute a local calling party number ("CPN") for the actual CPN of the call. Because carriers have the ability to substitute CPN, other methods in addition to the CPN are required to properly identify the true jurisdiction of the call.

Toll calls are also incorrectly identified by CPN when telephone numbers are assigned to customers that are not physically located in the rate center where the number is assigned. In the case of a Virtual NXX, telephone numbers are obtained in one rate center and assigned to customers in another rate center or even another state. When a South Carolina telephone 803-666 number is assigned to a customer physically located in San Francisco, the CPN will accurately show 803-666-2222, but the call is in fact an interstate call. Additional information is required to determine if that call is local or toll.

The JIP is a six (6) digit NPA-NXX field in the SS7 message that identifies the rate center or switch from which the call was originated. In the example of the customer located in San Francisco calling to South Carolina, the CPN would show the 803-666-2222, but the JIP would be populated with a San Francisco NPA-NXX, for example 415-454. Horry uses both the CPN and the JIP to determine the jurisdiction of the call, because Horry cannot accurately determine the jurisdiction of the call using only one of these parameters standing alone.

MCI argued that JIP would not give the proper jurisdictional information because MCI's switch serves a larger area than Horry's switch. However, the JIP still provides valuable information to help identify the jurisdiction of the call even in instances where the switch covers a large geographic area. At minimum, the JIP helps identify calls that are originated outside the regional switch. In the situation described above, for example, the JIP would identify the call originated in San Francisco as an interstate toll call.

The Alliance for Telecommunications Industry Solution's ("ATIS") Ordering and Billing Forum ("OBF")[51] has addressed JIP over the last several years. In December of 2004, ATIS adopted seven rules for populating JIP. Although ATIS did not make JIP a mandatory field, it strongly recommended the use of JIP by companies to assist with identifying the true jurisdiction of calls. Two of the seven rules address the issue of inclusion of JIP:

> Rule 1. JIP should be populated in the Initial Address Messages (IAMs) of all wireline and wireless originating calls where technically feasible.
>
> Rule 3. The Network Interconnection Interoperability Forum (NIIF) does not recommend proposing that the JIP parameter be mandatory since calls missing any mandatory parameter will be aborted. However the NIIF strongly recommends that the JIP be populated on all calls where technologically possible.

The NIIF rules also address the situation noted by MCI where a switch serves a regional area:

> Rule 4. Where technically feasible if the origination switch or mobile switching center ("MSC") serves multiple states/LATAs, then the switch should support multiple JIPs such that the JIP used for a given call can be populated with an NPA-NXX that is specific to both the switch as well as the state and LATA of the caller.

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[51] ATIS is a United States based body that is committed to rapidly developing and promoting technical and operations standards for the communications and related information technologies industry worldwide using a pragmatic, flexible and open approach. Over 1,100 industry professionals from more than 350 communications companies actively participate in ATIS' 22 industry committees and incubator solutions programs. These committees include National Interconnection Inter-operability Forum (NIIF), Industry Number Committee (INC) which oversees North American Number Committee (NANC), and the Ordering and Billing Forum (OBF). ATIS develops standards and solutions addressing a wide range of industry issues in a manner that allocates and coordinates industry resources and produces the greatest return for communications companies. ATIS creates solutions that support the rollout of new products and services into the communications marketplace. Its standardization activities for wireless and wireline networks include interconnection standards, number portability, improved data transmission, Internet telephony, toll-free access, telecom fraud, and order and billing issues, among others. ATIS is accredited by the American National Standards Institute (ANSI).

> If the JIP cannot be populated at the state and LATA level, the JIP should be populated with NPA-NXX specific to the originated switch or MSC where it is technically feasible.

MCI has a DMS switch, and the DMS switch is capable of supporting multiple JIPs. JIP is technically feasible and should be required. The Commission should adopt Horry's language on this issue that requires both JIP and CPN.

B. There Should Be Penalties for Misrepresenting Traffic.

Issue 6 relates to the question of what kind of penalties should apply in a situation where the parties are required to provide both JIP and CPN but do not. In Docket No. 2005-67-C, the Commission held that the Parties should provide both CPN and JIP where it is technologically and economically feasible, as defined by not being a barrier to entry. The Commission also found that any unidentified traffic should be treated as having the same jurisdictional ratio as the ratio of the identified traffic. Horry believes that is a reasonable procedure when CPN and JIP has been provided on at least 90% of the calls, but that it is not appropriate when CPN and JIP has not been provided on at least 90% of the calls. The lack of such a standard would make this situation ripe for abuse. For example, assume a carrier is required to provide CPN and JIP on all calls, and assume further that the carrier has 98% interstate traffic and 2% local traffic. Now assume that the carrier provides the required information only for 2% of the calls, and it is for the local calls only. Applying the Commission's standard, it would be assumed that 100% of the traffic is local when in fact 98% is interstate, and Horry would have no recourse against the carrier to be properly compensated for the interstate calls. Horry has proposed a reasonable standard (*i.e.*, that both CPN and JIP should be provided on at least 90% of all calls) as well as a reasonable consequence for failure to meet the standard (i.e.,

if CPN and JIP are not provided on at least 90% of the calls, it is presumed that the traffic with the missing information is non-local in nature and that appropriate access charges apply).

As stated in Issue 1, some carriers are misrepresenting traffic as local to avoid paying access charges. Horry believes that if the incentive for misrepresenting traffic is eliminated, then carriers are more likely to comply and provide accurate information. It should also be noted that the proposed language is reciprocal and, therefore, Horry is not asking MCI to do anything Horry itself is not willing to do. The Commission should adopt Horry's language on this issue.

C. Both Parties Must Be Responsible for Providing Accurate Signaling Information.

Issue 8 also relates to whether or not the parties should be required to provide JIP, but involves another issue as well. MCI has proposed language that will enable it to "pass along as received" signaling information it receives from other carriers. This language would allow MCI to avoid responsibility for the accuracy of signaling information, even though the signaling information is within MCI's control. MCI is not a tandem provider in South Carolina; therefore, there should not be any carrier connecting to MCI to "pass along" signaling information.

MCI's inclusion of the "pass along as received" language is particularly problematic in light of the fact that MCI intends to be an intermediary for another carrier. This language would allow the originating carrier to pass blatantly incorrect information that would allow calls to be terminated as local calls, instead of toll calls that are subject to access charges. With MCI's suggested language, Horry would have no recourse with

MCI for incorrect information. In addition, if MCI's arguments are accepted, the originating carrier would not be required to have an agreement with Horry; therefore, Horry would have no recourse with respect to the originating carrier, either. MCI's proposed language would open a "loop hole" that would allow interexchange carriers and VoIP providers to terminate all traffic through MCI and to avoid responsibility for sending accurate signaling information along with the calls.

Again, the language proposed by Horry is mutual. Horry is willing to be responsible for the accuracy of signaling information it sends to MCI and MCI should be willing to take the same responsibility. Therefore, Horry's wording of this section should be adopted by the Commission.

CONCLUSION

As stated above, each of the issues presented in this arbitration has previously been addressed in detail by the Commission in Docket No. 2005-67-C, and there is no reason for the Commission to deviate from its rulings in that docket or from any prior precedent relied upon by the Commission in reaching its rulings in Docket No. 2005-67-C, except with respect to the standard established with respect to the provision of JIP in Issue 6, as described above. In particular, Horry believes that every carrier seeking to serve end user customers in Horry's service area should be required to make its own arrangements to exchange traffic with Horry. Horry respectfully requests that the Commission find in favor of Horry on these important issues for the reasons stated herein.

Respectfully submitted,

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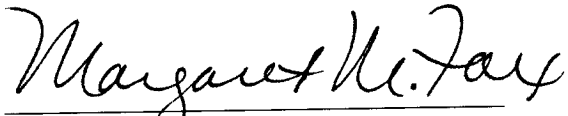

M. John Bowen, Jr.
Margaret M. Fox

ATTORNEYS FOR HORRY TELEPHONE COOPERATIVE, INC.

November 28, 2005

BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2005-188-C

RE: Petition of MCImetro Access Transmission Services, LLC for Arbitration of Certain Terms and Conditions of Proposed Agreement with Horry Telephone Cooperative, Inc. Concerning Interconnection and Resale under the Telecommunications Act of 1996

CERTIFICATE OF SERVICE

I, Rebecca W. Martin, Secretary for McNair Law Firm, P. A., do hereby certify that I have this date served one (1) copy of a Post Hearing Brief of Horry Telephone Cooperative, Inc. and one (1) copy of a Proposed Order of Horry Telephone Cooperative, Inc. in the above-referenced matter on the following parties of record by causing said copies to be deposited with the United States Postal Service, first class postage prepaid and affixed thereto, and addressed as shown below.

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